

MINUTES OF THE CITY COUNCIL

SAN JOSÉ, CALIFORNIA

TUESDAY, MAY 22, 2007

The Council of the City of San José convened in regular session at 9:30 a.m. in the Council Chambers at City Hall.

Present: Council Members - Campos, Chirco, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

Vacant: - Council District 4.

Upon motion unanimously adopted, Council recessed at 9:30 a.m. to a Closed Session in Room W133, (A) to confer with Legal Counsel pursuant to Government Code Section 54956.9 subsection (a) with respect to existing litigation to consider the case of: (1) Great Oaks Water Company, Inc. v. City of San José, et al.; (2) Elmore Pipe Jacking, Inc. a Division of Affholder v. City, et al.; (3) City of San José v. World Oil Co.; (4) City of San José v. Union Pacific; (5) City of San José v. Piedmont & Sierra Plaza, LLC; (6) Huynh v. Baiza, et al.; (7) McGuire & Hester v. City, et al.; (8) D&K Painting Company, Inc. v. City of San José, et al.; (9) DeLaRosa, et al. v. City of San José, et al.; (10) San José Silicon Valley Chamber of Commerce Political Action Committee, et al. v. City of San José, et al.; (11) San José Mercury News v. City of San José, et al. (B) to confer with Legal Counsel pursuant to: Government Code Section 54956.9 with respect to anticipated litigation, (1) subsection (b), initiation of litigation in four (4) matters; (2), subsection (c) with significant exposure in one (1) matter. (C) to confer with Labor Negotiator pursuant to Government Code Section 54957.6: City Negotiator: City Manager Designee Alex Gurza; Employee Organizations: (1) Association of Engineers & Architects, IFPTE, Local 21; (2) Association of Building, Mechanical and Electrical Inspectors; (3) Association of Maintenance Supervisory Personnel; (4) City Association of Management Personnel; (5) Confidential Employees' Organization, AFSCME, Local 101; (6) International Brotherhood of Electrical Workers, Local 332; (7) Municipal Employees Federation, AFSCME, Local 101; (8) International Union of Operating Engineers, Local 3.

CLOSED SESSION (Cont'd.)

By unanimous consent, Council recessed from the Closed Session at 10:45 a.m. and reconvened at 1:34 p.m. in the Council Chambers

Present: Council Members - Campos, Chirco, Constant, Cortese, Liccardo, Nguyen, Oliverio, Pyle, Williams; Reed.

Absent: Council Members - None.

Vacant: - Council District 4.

INVOCATION

Students from the Horace Cureton Elementary School Role Model Program were present and two of the students Ruby Delgros and Mayoly Sandoval described their role models. (District 5)

PLEDGE OF ALLEGIANCE

The Students from Horace Cureton, Guadalupe and Horace Mann Elementary Schools, accompanied by Mayor Reed, led the Pledge of Allegiance.

ORDERS OF THE DAY

Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the Orders of the Day and the Amended Agenda were approved, with Items 2.6, 3.1 and 5.2 deferred to June 5, 2007. (10-0.)

CEREMONIAL ITEMS

1.1 Presentation of a commendation to the Employee Recognition Team for their exemplary dedication and valuable contributions to the City organization. (City Manager's Office/ Mayor)

Action: Mayor Reed and Chief Deputy City Manager Kay Winer recognized and commended the Employee Recognition Team for their outstanding dedication and important contributions to the City of San José.

**1.5 Presentation of a proclamation declaring May 25, 2007 as National Missing Children's Day in San José. (Mayor/Fire)
(Rules Committee referral 5/9/07)**

Action: Mayor Reed and Fire Captain David Olmos recognized May 25, 2007 as "National Missing Children's Day" in the City of San José.

1.2 Presentation of a commendation to Bob Gill for receiving the 2007 Asian Academy Hall of Distinction Award from the Board of Directors of the Asian Leaders Association. (Cortese)

Action: Mayor Reed and Vice Mayor Cortese recognized and commended Mr. Bob Gill for receiving the 2007 Asian Academy Hall of Distinction Award from the Board of Directors of the Asian Leaders Association.

1.3 Presentation by PG&E of an Energy Efficiency Program Rebate check for \$64,080 to the City of San José for energy saving retrofits at the Yerba Buena Pump Station operated by the Municipal Water System. (Cortese)

Action: A Representative of Pacific Gas and Electric Company presented an Energy Efficiency Program Rebate check for \$64,080 to Mayor Reed and the City of San José for energy saving retrofits at the Yerba Buena Pump Station operated by the Municipal Water System.

1.7 Presentation of a proclamation declaring May 20th through May 26th as National Public Works Week. (Public Works)

Action: Reed and Director of Public Works Katy Allen recognized May 20, 2007 through May 26, 2007 as "National Public Works Week".

Council Member Liccardo introduced the 4th Graders from Horace Mann Elementary School, who shared their drawings depicting their future vision of San José.

**1.8 Presentation of a commendation to Barry Swenson for his exceptional contributions to the City and people of San José in the provision of market and affordable housing and the revival of San José historic landmark buildings. (Redevelopment Agency/Liccardo/ Williams)
(Rules Committee referral 5/9/07)**

Action: Mayor Reed, Council Member Williams, and Redevelopment Agency Executive Director Harry S. Mavrogenes recognized and commended Mr. Barry Swenson for his outstanding contributions to the City of San José and its residents in the market, affordable housing and the revival of San José historic landmark buildings.

CONSENT CALENDAR

Upon motion by Council Member Williams, seconded by Council Member Campos, and carried unanimously, the Consent Calendar was approved and the below listed actions were taken as indicated. (10-0.)

2.2 Readoption of ordinances.

- (a) **ORD. NO. 28007 – Amends Chapter 9.10 of Title 9 of the San José Municipal Code by amending Sections 9.10.1030, 9.10.1100, 9.10.2430, and 9.10.2440 to revise the provisions relating to contaminated recyclables carts, multi-family container set-outs, and the Construction and Demolition Debris Deposit Program.**

Documents Filed: Proof of Publication of the title of Ordinance No. 28007 executed on May 11, 2007, submitted by the City Clerk.

Action: [Ordinance No. 28007](#) was adopted (10-0.)

- (b) **ORD. NO. 28010 – Rezones certain real property situated at the west side of Spar Avenue, approximately 130 feet northerly of Olin Avenue to R-1-8 Single Family Zoning District. C06-114**

Documents Filed: Proof of Publication of the title of Ordinance No. 28007 executed on May 11, 2007, submitted by the City Clerk.

Action: [Ordinance No. 28010](#) was adopted (10-0.)

- (c) **ORD. NO. 28011 – Rezones certain real property located on the south side of E. Williams Street, 350 feet west of S 24th Street and situated in the LI Light Industrial Zoning District to A(PD) Planned Development Zoning District. PDC06-040**

(Rules Committee referral 5/16/07)

Documents Filed: Proof of Publication of the title of Ordinance No. 28007 executed on May 11, 2007, submitted by the City Clerk.

Action: [Ordinance No. 28011](#) was adopted (10-0.)

2.3 Adoption of a resolution approving a Minor Amendment to the Airport Master Plan for the Norman Y. Mineta San José International Airport to modify the description of seven (7) specific east side non-terminal development projects. CEQA: Resolution Nos. 67380 and 71451, File No. PP07-078. (Airport)

Documents Filed: Memorandum from Director of Aviation William Sherry, dated May 2, 2007, recommending adoption of a resolution.

2.3 (Cont'd.)

Action: [Resolution No. 73767](#), entitled: "A Resolution of the Council of the City of San José Approving a Minor Amendment to the Airport Master Plan for the Norman Y. Mineta San José International Airport to Modify the Description of Seven Specific East Side Non-Terminal Development Projects", was adopted. (10-0.)

- 2.4 (a) **Adoption of a resolution amending Resolution No. 71488 to make the term of the three members of the Independent Hearing Panel to be consistent with State law, as amended.**
- (b) **Approval of the appointment of three members to the Independent Hearing Panel, consisting of a technical expert, a member of the public, and a member of the City Council.**

CEQA: Not a Project. (City Attorney/Mayor)

Documents Filed: (1) Memorandum from Mayor Reed, dated May 17, 2007, recommending the nominations of Bob Boydston and George Nakamura to the Independent Hearing Panel. (2) Memorandum from City Attorney Richard Doyle, dated May 10, 2007, recommending adoption of a resolution.

Council Member Constant pulled Item 2.4 for clarification.

Action: Upon motion by Council Member Constant, seconded by Council Member Liccardo and carried unanimously, [Resolution No. 73768](#), entitled: "A Resolution of the Council of the City of San José Amending Resolution No. 71488 to Provide that Terms of Members of the Independent Hearing Panel Shall Be as Set Forth in the California Public Resources Code, As it May be Amended from Time to Time", was adopted and the nominations of Bob Boydston and George Nakamura to the Independent Hearing Panel were approved, with Staff directed to post to the website information about the panel and a list of the members. (10-0.)

- 2.5 **Acceptance of the Office of the City Auditor's Report of Activities for the Period March 16 through April 15, 2007. (City Auditor)**
(Rules Committee referral 5/9/07)

Documents Filed: Report of Activities for the Period March 16 through April 15, 2007, from the Office of the City Auditor.

Action: The Report of Activities for the Period March 16 through April 15, 2007 was accepted. (10-0.)

- 2.6 **Adoption of a resolution authorizing the Director of Finance to execute the second amendment to the agreement with FedEx Kinko's Office and Print Services, Inc. extending the term of the agreement from May 30, 2007 to August 31, 2007 and increasing the cost for black and white and color impressions and setting the cost for other services at a 5% discount of published rates. CEQA: Not a Project. (Finance)**

Action: Deferred to June 5, 2007 per Orders of the Day.

- 2.7 Adoption of a resolution authorizing the Director of Finance to execute the first amendment to the agreement between the City of San José and Acme Building Maintenance for custodial services at City Hall for the contract period ending July 9, 2007, correcting the required insurance coverage and adding additional services requiring an increase in compensation by \$65,000 from \$ 635,000 to a not-to-exceed amount of \$700,000. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated May 2, 2007, recommending adoption of a resolution.

Public Comments: Erik Larsen, AFSCME Local 101, expressed support for the Staff recommendation.

Action: Upon motion by Council Member Pyle, seconded by Council Member Chirco and carried unanimously, [Resolution No. 73769](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a First Amendment to the Agreement with Acme Building Maintenance for Custodial Services at City Hall”, was adopted. (10-0.)

- 2.8 Adoption of a resolution authorizing the Director of Finance to:**
- (a) Execute a service agreement for complete maintenance and repair of City Hall elevators and related equipment with Kone Inc. for a one year agreement for the term of May 22, 2007 through May 21, 2008, in an amount not to exceed \$150,000.**
 - (b) Exercise five additional one-year options to renew the agreement subject to appropriation of funds.**
- CEQA: Not a Project. Council District 3. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated May 2, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73770](#), entitled: “A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute a Service Agreement with Kone, Inc. for Maintenance and Repair of City Hall Elevators”, was adopted. (10-0.)

- 2.9 Adoption of a resolution authorizing the Director of Finance to execute an amendment to the agreement with Schindler Elevator Corporation to extend the term of the agreement by two months retroactively from May 1, 2007 through June 30, 2007, increasing compensation by \$19,734 from \$381,047 to a not to exceed amount of \$400,781 for elevator and escalator maintenance services at the Norman Y. Mineta San José International Airport. CEQA: Not a Project. (Finance)**

Documents Filed: Memorandum from Director of Finance Scott Johnson, dated May 2, 2007, recommending adoption of a resolution.

2.9 (Cont'd.)

Action: [Resolution No. 73771](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Director of Finance to Execute an Amendment to the Agreement with Schindler Elevator Corporation for Elevator and Escalator Maintenance Services at Norman Y. Mineta San José International Airport", was adopted. (10-0.)

- 2.10 Adoption of a resolution ordering the reorganization of the territory designated as Winchester No. 40 which involves the annexation to the City of San José of 0.42 acres more or less of land located at the west side of Spar Avenue, approximately 130 feet northerly of Olin Avenue, and generally bounded by the City of San José Annexations Winchester No. 11, 33 and 38, and the detachment of the same from the appropriate special districts including Central Fire Protection, West Valley Sanitation, County Lighting Services and Area No. 01 (Library) County Service. CEQA: Resolution No. 65459, File No. C06-144. Council District 1. (Planning, Building and Code Enforcement)**

Action: Deferred to June 5, 2007 per Administration.

- 2.11 Approval of an agreement with San José Water Company for installation of water facilities to serve the new Joyce Ellington Branch Library project and the multi-purpose facility of the adjacent Grant Elementary School, in the amount of \$226,067. CEQA: Exempt, File No. PP05-167. Council District 3. SNI: 13th Street. (Public Works)**

Documents Filed: Memorandum from Director of Public Works Katy Allen, dated May 8, 2007, recommending approval of an agreement.

Action: The agreement with San José Water Company for installation of water facilities to serve the new Joyce Ellington Branch Library project and the multi-purpose facility of the adjacent Grant Elementary School, in the amount of \$226,067, was approved. (10-0.)

- 2.12 Request for an excused absence for Council Member Pyle from the General Plan: Formal Initiation of the General Plan Update Study Session on May 3, 2007 due to Authorized City Business: Meeting of the Santa Clara County Emergency Preparedness Council. (Pyle)
(Rules Committee referral 5/9/07)**

Documents Filed: Memorandum from Council Member Pyle, dated May 2, 2007, requesting an excused absence.

Action: The excused absence for Council Member Pyle from the General Plan: Formal Initiation of the General Plan Update Study Session on May 3, 2007 due to authorized City business was approved. (10-0.)

2.13 Adoption of a resolution endorsing the extension of Caltrain service from Gilroy to Salinas. CEQA: Not a Project. (Transportation)

Documents Filed: memorandum from Director of Transportation James Helmer, dated May 2, 2007, recommending adoption of a resolution.

Action: [Resolution No. 73772](#), entitled: "A Resolution of the Council of the City of San José Endorsing the Extension of Caltrain Service to Salinas", was adopted. (10-0.)

**2.14 Request for an excused absence for Council Member Williams from the Budget Study Session: Neighborhood Services at 9:00 a.m. and late arrival for the Budget Study Session Public Safety at 11:00 a.m. on May 10, 2007 due to Authorized City Business: Attendance at the State Route 152-156 Improvement Project Ground Breaking at 8431 Pacheco Pass Highway, Hollister, CA. (Williams)
(Rules Committee referral 5/9/07)**

Documents Filed: Memorandum from Council Member Williams, dated May 7, 2007, requesting an excused absence.

Action: The excused absence for Council Member Williams from the Budget Study Session due to authorized City business was approved. (10-0.)

END OF CONSENT CALENDAR

STRATEGIC SUPPORT SERVICES

**3.1 Report of the Rules and Open Government Committee – May 2, 2007
Mayor Reed, Chair**

- (a) City Council
 - (1) Review New Add Items to May 8, 2007 Agenda
 - (2) Review May 15, 2007 Draft Agenda
- (b) Redevelopment Agency items reported out at Redevelopment Agency meeting
- (c) Legislative Update
 - (1) State
 - (2) Federal
- (d) Meeting Schedules
- (e) The Public Record
- (f) Appointments to Boards, Commissions and Committees
- (g) Rules Committee Reviews, Recommendations and Approvals
 - (1) Council Expenditures and Reimbursements
 - Continued from January 31, 2007
 - Deferred from April 25, 2007

3.1 Report of the Rules and Open Government Committee – May 2, 2007 (Cont'd.)
Mayor Reed, Chair

- (g) Rules Committee Reviews, Recommendations and Approvals (Cont'd.)
 - (2) Mexican Heritage Corporation Audit Discussion
 - (a) Mexican Heritage Corporation – Supplemental Information.
 - (b) Response to Mexican Heritage Corporation Audit Recommendations
See Item 9.1 for Council action taken.
- (h) Review of Council Committee Agendas
 - (1) Community and Economic Development Committee
 - (2) Neighborhood Services and Education Committee
 - (3) Transportation and Environment Committee
 - (4) Public Safety, Finance and Strategic Support Committee
- (i) Open Government Initiatives
 - (1) Reed Reforms
 - (a) Acceptance of the proposed curriculum for a Council Assistant Certification Program per Reed Reform #25, as amended
(Continued from 4/25/07)
See Item 3.5 for Council action taken.
 - (2) Sunshine Reform Task Force
 - (3) Significant Public Records Act Requests
 - (4) Council Policy Manual Update
- (j) Open Forum
- (k) Adjournment

Action: Deferred to June 5, 2007, per Orders of the Day.

3.4 As recommended by the Council Salary Setting Commission approval of an ordinance authorizing the salaries and benefits of the Mayor and City Council for Fiscal Year (FY) 2007 - 08 and FY 2008 - 09 as follows:

- (a) For the Mayor, increase the annual salary from \$105,000 to \$115,000 and \$127,000 for FY 2007 - 08 and FY 2008 - 09, respectively.
- (b) For each Council Member, increase the annual salary from \$75,000 to \$82,500 and \$90,000 for FY2007 - 08 and FY2008 - 09, respectively.
- (c) Retain the current levels of health, dental, and life insurance benefits through FY 2008 -09 in accordance with the benefits provided to management employees in Unit 99 and salary continuation insurance benefits as well as the City's contributions to CalPERS or PTC 457 plans through FY 2008 - 09.
- (d) Continue to require Council Members to pay \$250 for each unexcused absence at scheduled Council meetings, pursuant to City Charter Section 407.
- (e) Increase the monthly vehicle allowance for the Mayor and City Council from \$350 to \$600 through FY2008 - 09.

(City Clerk)

(Rules Committee referral 5/9/07)

3.4 (Cont'd.)

Documents Filed: (1) Memorandum from Council Members Pyle, Nguyen, Constant and Liccardo, dated May 21, 2007, recommending direction to Staff to research various methods for Council Salary Setting that would remove Council approval from the Council Salary Setting process and this direction shall be referred to the City Charter Review process which is set to begin in Fall 2007. (2) Supplemental memorandum from City Attorney Richard Doyle, dated May 16, 2007, transmitting background on the Salary Setting Commission recommendation and the ordinance. (3) Memorandum from City Clerk Lee Price, dated May 10, 2007, transmitting the recommendations of the Council Salary Setting Commission. (4) Supplemental memorandum from City Clerk Lee Price, dated May 10, 2007, transmitting background pursuant to Section 407 of the San José City Charter and including a summary of the Council's actions regarding the Commission's 2005 report.

Motion: Council Member Constant moved approved acceptance of the Council Salary Setting Commission recommendations. Council Member Pyle seconded the motion.

Public Comments: Jon Fitch, Tom Cochran, and Larry Stone urged Council to accept the Council Salary Setting Commission report. Also speaking in favor were Ross Signorino, Robert Kieve, William Garrett, Mary Follenweider and Parris Correa.

Speaking in opposition were Bill Delte, Dennis Kyne and Clark Williams.

Council Member Constant amended the motion and added approval of the memorandum he cosigned with Council Members Pyle, Nguyen and Liccardo. Council Member Pyle accepted the amendment.

Council Member Liccardo requested to take action separately on the Council Salary Setting Commission Report. Council Members Constant and Pyle accepted the amendment.

Vice Mayor Cortese objected to the action of the Council Salary Setting Commission Report and stated that the Council has the discretion to make the final decision. Council Member Liccardo concurred with Vice Mayor Cortese.

Extensive Council discussion followed. City Attorney Richard Doyle responded to Council questions.

Mayor Reed commented that the Council Members have not had a raise for 5 years and may lose quality candidates in the future. He added that he would not accept the pay increase but future mayors should not be burdened. He objected to the motion on the floor.

Council Member Constant amended his motion to accept the Council Salary Setting Commission Report with Staff directed to use money from either the Council General Fund or the Salary Reserve Fund. Council Member Pyle accepted the amendment. (6-4. Noes: Cortese, Liccardo, Oliverio; Reed.)

3.4 (Cont'd.)

Council Member Constant moved approval of the memorandum he cosigned with Council Members Pyle, Nguyen and Liccardo, with Staff directed to research various ways of the process and to return in Fall 2007. Council Member Pyle seconded the motion.

Action: On a call for the question, the motion carried, [Ordinance No. 28052](#), entitled: "An Ordinance of the City of San José Adopting Salaries, Pursuant to City Charter Section 407, and Other Compensation for the Mayor and Council Members Recommended by the Council Salary Setting Commission", was passed for publication, as amended, with Staff directed to use money from either the Council General Fund or the Salary Reserve Fund. (6-4. Noes: Cortese, Liccardo, Oliverio; Reed.).

Staff was further directed to: (1) Research various methods for Council salary setting that would remove City Council approval from the process; (2) Refer the matter to the City Charter Review process which is set to begin in Fall 2007. (3) Return to Council in September 2007 with recommendations. (10-0.)

3.5 Approval of actions related to Reed Reforms:

- (a) **Acceptance of the proposed curriculum for a Council Assistant Certification Program, per Reed Reform #25: *Create a certified training program for Mayoral and Council Member staff to ensure they are fully aware of laws and ethical standards so they can help their bosses follow the law.***
- (b) **Assign discretion to individual Council Members on the level of participation for Part-Time Council Assistants in the Council Assistant Certification Program for curriculum that is not required as a condition of employment or by state law.**

(City Manager's Office)

[Rules and Open Government Committee 5/2/07 - Item (I1)]

Documents Filed: Memorandum from City Clerk Lee Price, dated May 8, 2007, transmitting as recommended by the Rules and Open Government Committee on May 2, 2007, acceptance of Reed Reform 25, Council Assistants Certification.

Action: Upon motion by Council Member Pyle, seconded by Vice Mayor Cortese and carried unanimously, the proposed curriculum for a Council Assistant Certification Program, per Reed Reform #25 and discretion to individual Council Members on the level of participation for Part-Time Council Assistants in the Council Assistant Certification Program for curriculum that is not required as a condition of employment or by state law, were accepted. (8-0-2. Absent: Campos, Constant.)

3.6 Acceptance of the Administration's recommendation to not approve the benefit enhancements requested by the Association of Retired San José Police Officers and Firefighters (Police and Fire Retirees) and the San José Retired Employees Association (Federated Retirees). CEQA: Not a Project. (City Manager's Office)

Action: Deferred to June 19, 2007 per the Association of Retired San José Police Officers and Firefighters.

3.7 Adoption of a resolution:

- (a) **Authorizing the issuance of the City of San José General Obligation Bonds, Series 2007 (Parks and Public Safety Projects) ("2007 Bonds") in the not-to-exceed aggregate principal amount of \$100,000,000 to be sold at a competitive sale.**
- (b) **Approving, in substantially final form, the Fiscal Agent Agreement, Official Notice Inviting Bids, and Preliminary Official Statement and authorizing the City Manager or other authorized officers to execute these documents and other related documents as necessary in connection with the issuance of the 2007 Bonds.**

CEQA: Not a Project. (Finance)

Documents Filed: (1) Memorandum from Deputy Director of Finance Julia Cooper, dated May 2, 2007, recommending adoption of a resolution. (2) Supplemental memorandum from Deputy Director of Finance Julia Cooper, dated May 16, 2007, transmitting the official Statement for the proposed Series 2007 Bonds and its Appendix A.

Action: Upon motion by Council Member Williams, seconded by Council Member Constant and carried unanimously, [Resolution No. 73773](#), entitled: "A Resolution of the Council of the City of San José Authorizing the Issuance of its General Obligation Bonds, Authorizing and Directing the Execution of a Fiscal Agent Agreement and Certain Other Related Documents and Authorizing Actions Related Thereto", was adopted. (9-0-1. Absent: Campos.)

- 3.8**
- (a) **Approval of the fifth amendment to the General Banking Services Agreement with Union Bank of California to increase the maximum annual compensation by \$100,000 from \$820,000 to a not-to-exceed amount of \$920,000 for July 1, 2006 through June 30, 2007.**
 - (b) **Adoption of the following Appropriation Ordinance Amendments in the General Fund**
 - (1) **Increase the Banking Services appropriation by \$100,000; and**
 - (2) **Decrease the Insurance Premiums appropriation by \$100,000.**

CEQA: Not a Project. (Finance/City Manager's Office)

Documents Filed: Memorandum from Director of Finance Scott Johnson and Budget Director Larry Lisenbee, dated May 2, 2007, recommending approval of the Fifth Amendment to the agreement and adoption of appropriation ordinance amendments.

3.8 (Cont'd.)

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Constant and carried unanimously, the fifth amendment to the General Banking Services Agreement with Union Bank of California to increase the maximum annual compensation by \$100,000 from \$820,000 to a not-to-exceed amount of \$920,000 for July 1, 2006 through June 30, 2007 was approved and [Ordinance No. 28053](#), entitled: “An Ordinance of the City of San José Amending Ordinance No. 27801 to Appropriate Monies in the General Fund for Banking Services; and Providing that This Ordinance Shall Become Effective Immediately Upon Adoption”, was adopted. (8-0-2. Absent: Campos, Chirco.)

3.9 (a) **Approval of the proposed FY 2006/07 - 2011/12 Fiscal Year Work Plan for the Rule 20A and Rule 20B (In-Lieu Fee) Underground Utility Program.**

(b) **Direct staff to work with PG&E and return to Council in September with a revised work plan that provides for expedited delivery of Rule 20A Projects.**

CEQA: Not a Project. (Public Works)

(Deferred from 5/1/07 – Item 3.4 and 5/15/07 – Item 3.3)

Action: Deferred to June 5, 2007 per Administration.

3.10 **As recommended by the Rules and Open Government Committee on May 16, 2007, watch the position for AB 239 (DeSaulnier) – Counties’ Right to Levy Increased Recording Fees to Fund Affordable Housing Development. (City Clerk)** **(Rules Committee referral 5/16/07)**

Documents Filed: Supplemental memorandum from Director of Housing Leslye Krutko, dated May 18, 2007, transmitting the feedback the Committee recommended for the “watch” position.

Vice Mayor Cortese requested that Staff outreach to the Realtors Association.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the watch the position for AB 239 (DeSaulnier) – Counties’ Right to Levy Increased Recording Fees to Fund Affordable Housing Development was approved, with Staff directed to outreach to the Realtors Association. (8-0-2. Absent: Campos, Chirco.)

NEIGHBORHOOD SERVICES

5.1 Report of the Neighborhood Services and Education Committee – May 10, 2007 Council Member Chirco, Chair

Documents Filed: The Neighborhood Services and Education Committee Report dated May 10, 2007.

- (a) Review of Performance Measure Reporting. Attachment: Memorandum from Chief Deputy City Manager Kay Winer, dated April 26, 2007, recommending acceptance of the report.

The Committee accepted the report with direction that Management Partners, Inc. return in June with a follow-up report.

- (b) Update on Family Learning Centers. Attachment: Memorandum from City Library Director Jane Light, dated April 26, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (c) Progress Report on the Early Care and Education Strategic Plan. Attachment: Memorandum from City Library Director Jane Light, dated April 26, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (d) Contract Management Update. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated April 25, 2007, recommending acceptance of the report.

The Committee accepted the report. See Item 5.2 for Council action taken.

- (e) Safe School Campus Initiative Update. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso and Police Chief Robert Davis, dated April 20, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (f) Report on PRNS Refocusing of Service Delivery. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated April 26, 2007, recommending acceptance of the report.

The Committee accepted the report.

**5.1 Report of the Neighborhood Services and Education Committee – May 10, 2007
Council Member Chirco, Chair (Cont'd.)**

- (g) Youth Commission Update. Attachment: Memorandum from Director of Parks, Recreation and Neighborhood Services Albert Balagso, dated April 20, 2007, recommending acceptance of the report.

The Committee accepted the report.

- (h) Strong Neighborhoods Monthly Update
 - (1) Strong Neighborhood Performance Measures.
 - (2) Neighborhoods Commission Proposal.

The Committee accepted the report. See Item 5.3 for Council action taken.

- (i) Schools/City Collaborative Monthly Update
 - (1) Next meeting with Superintendents Task Force.

The Committee accepted the report.

- (j) Update on Council Directives. - There were none.
- (k) Oral Petitions - None were presented.
- (l) Adjournment - The meeting was adjourned at 3:47 p.m.

Action: Upon motion by Council Member Chirco, seconded by Council Member Pyle and carried unanimously, the Neighborhood Services and Education Committee Report and the actions of May 10, 2007, were accepted. (10-0.)

**5.2 Approval of the Healthy Neighborhood Venture Fund Advisory Committee's approval of the 2007-2008 funding recommendations made by the Parks, Recreation and Neighborhood Services Department for inclusion in the final Adopted Budget. (Parks, Recreation and Neighborhood Services)
[Neighborhood Services and Education Committee referral - Item 5.1(d)]**

Action: Deferred to June 5, 2007, per Orders of the Day.

**5.3 (a) Approval the recommendation to extend the term of the Project Advisory Committee (PAC) to March 31, 2008, and refer the extension to City Council for consideration.
(b) Acceptance of the progress report on the development of the proposed citywide Neighborhoods Commission.
CEQA: Not a Project. (City Manager's Office)
[Neighborhood Services and Education Committee referral – Item 5.1(h)(1)&(2)]**

Documents Filed: Memorandum from Agenda Services Manager Nadine Nader, dated May 14, 2007, transmitting the report.

5.3 (Cont'd.)

Deputy City Manager Mark Linder introduced Strong Neighborhoods Manager Laura Lam, who presented an overview of the Proposed SNI Project Advisory Committee extension.

Action: Upon motion by Council Member Campos, seconded by Council Member Williams and carried unanimously, the Project Advisory Committee term was extended to March 31, 2008, the extension was referred to City Council for consideration; and the progress report on the development of the proposed citywide Neighborhoods Commission was approved. (10-0.)

TRANSPORTATION & AVIATION SERVICES

- 6.2 (a) **Receive presentation from California Transportation Commissioner Carl Guardino.**
(b) **Acceptance of staff report on San José regional transportation priorities and funding needs.**
(c) **Discuss goals and opportunities for the California Transportation Commission to support San José's regional transportation priorities.**
CEQA: Not a Project. (Transportation)

Documents Filed: Memorandum from Director of Transportation James Helmer, dated May 4, 2007, recommending receiving the presentation from California Transportation Commissioner Carl Guardino, acceptance of the Staff report and discussion of the goals and opportunities for the California Transportation Commission.

California Transportation Commissioner Carl Guardino presented a status report.

Deputy Director of Transportation Hans Larsen presented the San José regional transportation priorities and funding needs. Director of Transportation James Helmer and Deputy Director of Transportation Hans Larsen responded to Council questions.

Public Comments: Dennis Kyne stated that money should be put towards public transportation in lieu of roadways. Cameron Colson commented that the City can cut costs by maintaining weed control.

Action: The presentation was received. There was no Council action required.

JOINT COUNCIL/REDEVELOPMENT AGENCY

The Joint Council/Redevelopment Agency Board convened at 4:08 p.m. in a Joint Session to Consider Item 9.1.

- 9.1**
- (a) Approval of the recommendations noted in the City Auditor's Report titled *A Review of the Mexican Heritage Corporation's Ability to Operate and Maintain the Mexican Heritage Plaza*. (City Auditor)**
 - (b) Acceptance of staff's recommendations for a work plan that provides short and long term strategies to address the Auditor's recommendations on *A Review of the Mexican Heritage Corporation's Ability to Operate and Maintain the Mexican Heritage Plaza* and to forward those recommendations to the City Council for approval. (City Manager's Office)**
 - (c) Adoption of a resolution authorizing the City Manager to negotiate and execute:**
 - (1) The Fourth Amendment to the Loan Agreement entered into by the City and Mexican Heritage Corporation (MHC) to defer repayment of MHC's loan for 12 months, to revise the repayment schedule accordingly, to make corresponding amendments to the Promissory Note, and to revise the Loan Agreement to incorporate the recommendations in the City Auditor's Report.**
 - (2) The Fifth Amendment to the Operation and Maintenance Agreement entered into by the City and MHC to require MHC to provide additional monthly financial reports to the City for the remainder of the term of the Agreement.**

[Rules and Open Government Committee 5/2/07 - Item (G2)]

Documents Filed: (1) Supplemental memorandum from Redevelopment Agency Executive Director Harry S. Mavrogenes, dated May 21, 2007, outlining the proposed changes to the Redevelopment Agency's agreement with MHC and provides a rationale for differences in the amended agreement and those recommended by the City Auditor. (2) Memorandum from City Clerk Lee Price, dated May 8, 2007, transmitting as recommended by the Rules and Open Government committee on May 2, 2007, to approve the recommendations as noted in the City Auditor's Report and acceptance of the Staff recommendations for a work plan.

Chief Deputy City Manager Kay Winer, Redevelopment Agency Director Harry Mavrogenes and Senior Program Performance Auditor of the Office of the City Auditor Chris Constantin responded to Council questions.

Council Member Liccardo expressed concern about the Mexican Heritage Corporation being able to operate under the allocation of monthly payments.

9.1 (Cont'd.)

Motion: Council Member Liccardo moved approval of the Staff recommendations with the stipulation that Staff advance funds, subject to the City Manager's approval and a contract amendment, for two categories of personnel costs associated with hiring up to one full-time employee for each position for accounting and revenue generating purposes, with the advance no more than the annual allocation and no more than one FTE for each position. Council Member Campos seconded the motion.

Council Member Oliverio requested to amend the motion to request the Mexican Heritage Corporation to post audited financials on their website in a manner that ensures easy public access. The amendment was accepted by Council Members Liccardo and Campos.

Extensive Council discussion ensued.

Action: On a call for the question, the motion carried unanimously, the recommendations noted in the City Auditor's Report titled "A Review of the Mexican Heritage Corporation's Ability to Operate and Maintain the Mexican Heritage Plaza" were approved, the work plan that provides short and long term strategies to address the Auditor's recommendations was accepted and [Resolution No. 73774](#), entitled: "A Resolution of the Council of the City of San José Authorizing the City Manager to Negotiate and Execute the Fourth Amendment to the Loan Agreement with Mexican Heritage Corporation to Defer Payment of the Loan for 12 Months and to Restructure the Repayment of the Loan and to Make Corresponding Amendments to the Note; and to Negotiate and Execute the Fifth Amendment to the Operation and Maintenance Agreement with Mexican Heritage Corporation to Require Additional Monthly Financial Reports", was adopted, with Staff directed to: (1) Advance funds, subject to the City Manager's approval and a contract amendment, for two categories of personnel costs associated with hiring up to one full-time employee for each position for accounting and revenue generating purposes, with the advance no more than the annual allocation and no more than one FTE for each position. (2) Mexican Heritage Corporation was requested to post on their website audited financials in a manner that ensures easy public access. (9-0-1. Absent: Reed.)

The Joint Council/Redevelopment Agency Board was adjourned at 4:45 p.m.

STRATEGIC SUPPORT SERVICES

3.3 Interview Planning Commission applicants and consider appointment to fill one unexpired term ending June 30, 2008. (City Clerk) (Rules Committee referral 5/9/07)

Documents Filed: (1) Memorandum from City Clerk Lee Price, dated May 18, 2007, recommending six applicants for the Planning Commission. (2) Memorandum from Xavier Campos, Chair of the Planning Commission, dated May 18, 2007, requesting that Council follow its normal outreach and to allow people who have not previously applied to service on the Planning Commission. (3) Three rounds of ballots cast by Council.

Action: The Planning Commission applicants Joseph Bentley, Bob Gill, Randi Kinman, Robert Levy and Bonnie Mace were interviewed by the City Council. On the vote of the third round of ballots cast, Randi Kinman was appointed to the Planning Commission to fill one unexpired term ending June 30, 2008. (10-0.)

NOTICE OF CITY ENGINEER'S PENDING DECISION ON FINAL MAPS

In accordance with Sec. 19.16.140d of the San José Municipal Code, this is notice of the City Engineer's pending decision on the following Final Maps:

<u>Tract</u>	<u>Location</u>	<u>Council District</u>	<u>Developer</u>	<u>Lots/Units</u>	<u>Type</u>	<u>Proposed Decision</u>
9840	Southwest Corner of N. Capitol Ave. and Mabury Rd.	4	Blossom Valley Investors, Inc.	11 Lots/ 89 Units	MFA	Approve
9878	West side of Bird Ave., 800 feet south of Willow St.	6	Santa Clara Redevelopment, I, LLC.	1 Lot/ 12 Units	Apartment Conversion to Condos	Approve

OPEN FORUM

- (1) Dennis Kyne and Cameron Colson spoke in favor of using advanced technology for safe application of pesticides in lieu of harmful chemicals. The speakers were referred to Chief Deputy City Manager Kay Winer.
- (2) Mark Trout expressed religious viewpoints.
- (3) Robert Apgar shared personal observations.
- (4) Stephen Hazel voiced personal points of view.

ADJOURNMENT

The Council of the City of San José adjourned the afternoon session at 6:13 p.m.

RECESS/RECONVENE

The City Council recessed at 6:13 p.m. from the afternoon Council Session and reconvened at 7:04 p.m. in the Council Chambers, City Hall.

Present: Council Members - Campos, Chirco, Constant, Cortese, Liccardo, Nguyen, Pyle, Williams; Reed.

Absent: Council Members - None.

Vacant: - Council District 4.

City Clerk Lee Price read the requests for continuance of the applications. Upon motion by Council Member Pyle, seconded by Council Member Chirco, and carried unanimously, the below noted continuances and actions were taken as indicated. (10-0.)

CEREMONIAL ITEMS

1.4 Presentation of a commendation to the San José Volunteer Income Tax Assistance (VITA) Volunteers for offering free tax help to people who cannot afford professional assistance for over thirty-eight years. (Cortese)

Action: Mayor Reed and Vice Mayor Cortese recognized and commended the San José Volunteer Income Tax Assistance Volunteers for offering free tax help to people who cannot afford professional assistance for over thirty-eight years.

1.6 Presentation of a commendation recognizing Robert Corpus and the Stories of Service Program for working to increase the recognition of great heroes of our past. (Mayor) (Rules Committee referral 5/9/07)

Action: Mayor Reed recognized and commended Mr. Robert Corpus and the Stories of Service Program for working to increase the recognition of great heroes of the past.

1.9 Swearing in ceremony for District 3 Youth Commissioner, Claudia Flores. (City Clerk) (Rules Committee referral 5/16/07)

Action: Mayor Reed and Council Member Liccardo introduced Ms. Claudia Flores. City Clerk Lee Price administered Oath of Office to Ms. Flores, the new District 3 Youth Commissioner.

COMMUNITY & ECONOMIC DEVELOPMENT

- 4.2 Approval of an ordinance amending Ordinance No. 27606 and repealing Ordinance No. 27932 to extend the entire period of the limited pilot program from January 1, 2006, through October 31, 2007, which program automatically terminates if 100 permits are issued; and amending Ordinance No. 27675 to extend until October 31, 2007 the temporary suspension of Chapter 14.25 of Title 14 of the San José Municipal Code pertaining to park impact requirements otherwise applicable to second units, without modifying other parts of the second unit pilot program. CEQA: Exempt, File No. PP07-088. (Planning, Building and Code Enforcement/Housing)
(Deferred from 5/15/07 – Item 4.2)**

Documents Filed: (1) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel and Director of Housing Leslye Krutko, dated April 25, 2007, recommending approval of an ordinance. (2) Proof of Publication of Notice of Public Hearing, executed on May 4, 2007, submitted by the City Clerk.

Public Comments: Speaking in favor of the Staff recommendation and to expansion of the program were Lucille Proulx, Pat Whiteside and Robson Mahowald.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti responded to Council questions.

Action: Upon motion by Vice Mayor Cortese, seconded by Council Member Campos and carried unanimously, [Ordinance No. 28055](#), entitled: “An Ordinance of the City of San José Amending [Ordinance No. 27606](#) and Repealing [Ordinance No. 27932](#) to Extend the Entire Period of the Limited Pilot Program to Allow Certain Second Residential Units from January 1, 2006 to October 31, 2007, Which Program Automatically Terminates if 100 Permits are Issued; and Amending [Ordinance No. 27675](#) to Extend Until October 31, 2007 the Temporary Suspension of Chapter 14.25 of Title 14 of the San José Municipal Code Pertaining to Park Impact Requirements Otherwise Applicable to Second Units, Without Modifying Other Parts of the Second Unit Pilot Program”, was passed for publication. (10-0.)

GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

- 10.1 (a) Tentative approval of a General Plan text amendment request to change the Land Use/Transportation Diagram designation from Medium Low Density Residential (8 DU/AC) to General Commercial on an approximately 0.4-acre site located on the northeast corner of Winchester Boulevard and Williams Road (960 and 990 Winchester Boulevard) (Ronnie Berry, Owner/Applicant). Director of Planning, Building and Code Enforcement and the Planning Commission recommend approval (5-0-1; Platten absent). CEQA: Negative Declaration. SNI: Winchester.
GP06-06-02 - District 6.**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP06-06-02, dated April 17, 2007, recommending approval on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated May 2, 2007, transmitting the Planning Commission recommendation of approval. (3) Statement and Declaration of Conflict of Interest Form, dated May 22, 2007, from Council Member Constant.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Council Member Constant disclosed that he owns real property on 1000 South Winchester Boulevard and would not be participating in the vote.

Action: Upon motion by Council Member Liccardo, seconded by Council Member Nguyen and carried unanimously, the Staff/Planning recommendation was tentatively approved. (9-0-1. Disqualified: Constant.)

- (b) Tentative approval of a General Plan text amendment request to change the *San José 2020 General Plan* text to increase the maximum allowable building height from 50 feet to 65 feet at Valley Fair Shopping Mall (Valley Fair Mall, LLC, Applicant/Westfield Corporation, Owner) located on an approximately 53-acre site bounded by Forest Avenue to the north, Stevens Creek Boulevard to the south, Winchester Boulevard and City of Santa Clara to the west, and State Route 17 to the east. Director of Planning, Building and Code Enforcement and the Planning Commission recommend approval (6-0-0). CEQA: Resolution to be adopted.
GP06-T-04 - District 6.**

Action: Continued to June 5, 2007 per Administration.

END OF GENERAL PLAN PUBLIC HEARINGS ON CONSENT CALENDAR

GENERAL PLAN PUBLIC HEARINGS

10.2 Tentative approval of a General Plan text amendment to change the *San José 2020 General Plan* text to re-establish an Annual General Plan review of Major Issues. Director of Planning, Building and Code Enforcement recommends approval and the Planning Commission recommends alternative text (6-0-0). CEQA: Resolution No. 65459.

GP07-T-01 - Citywide

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-T-01, dated April 26, 2007, recommending approval on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated May 7, 2007, transmitting the Planning Commission recommendation of approval.

Assistant Director of Planning, Building and Code Enforcement Laurel Prevetti presented a brief amendment to the General Plan Review and Amendment Processes and responded to Council questions.

Discussion followed.

Vice Mayor Cortese moved approval of the Staff recommendations and requested that any future specific plans would come forward separately. Council Member Nguyen seconded the motion.

Mayor Reed opened the public hearing.

Public Comment: Michael Van Every spoke in favor of the Staff recommendation. Mayor Reed closed the public hearing.

Mayor Reed requested to amend the motion to strike the word “industrial” and the text to read “only employment land”. The amendment was accepted by Vice Mayor Cortese and Council Member Nguyen.

Council Member Campos requested Staff report back to the Rules and Open Government before returning to Council.

Deputy Director of Planning, Building, and Code Enforcement Laurel Prevetti stated that Staff will work through all the issues and will set a General Plan Hearing for Fall 2007.

Action: On a call for the question, the motion carried unanimously, the Staff/Planning recommendation was tentatively approved, with Staff to return in Fall 2007. (10-0.)

- 10.3 Tentative approval of a General Plan text amendment to change the *San José 2020 General Plan* text to prioritize commercial uses and discourage residential uses for the area within the Stevens Creek/West San Carlos Street Corridor west of Winchester Boulevard. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (6-0-0). CEQA: Resolution No. 65459. GP07-T-02 - District 1**

Documents Filed: (1) Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. GP07-T-02, dated April 27, 2007, recommending approval on the subject rezoning. (2) Memorandum from Planning Commission Secretary Joseph Horwedel, dated May 7, 2007, transmitting the Planning Commission recommendation of approval.

Public Comment: Mayor Reed opened the public hearing. There was no testimony from the floor. Mayor Reed closed the public hearing.

Council Member Constant stated that this action will retain area for employment jobs and preserve auto row.

Action: Upon motion by Council Member Constant, seconded by Council Member Pyle and carried unanimously, the Staff/Planning recommendation was tentatively approved. (8-0-2. Absent: Cortese, Liccardo.)

- 10.4 (a) Adoption of a resolution overriding a determination by the Airport Land Use Commission that the General Plan text amendment request File No. GP06-T-01 is inconsistent with the maximum allowable height policies of the Land Use Plan for Areas Surrounding Santa Clara County Airports due to inconsistency with the height regulations as stated in the FAA Part 77 elevations.**
- (b) Tentative approval of a General Plan text amendment request to change the *San José 2020 General Plan* text to increase the maximum allowable building height from 150 feet to 220 feet above ground level on an approximately 6.08-acre site located at the southeasterly corner of Airport Parkway and Old Bayshore Highway and amend the text of the Rincon South Specific Plan as it relates to the North San José Area Development Policy (Foster Enterprises, Owner/Applicant). Director of Planning, Building and Code Enforcement recommends approval and Planning Commission recommends deferral, which is deemed a negative recommendation of the Planning Commission pursuant to San José Municipal Code Section 18.08.100 (6-0-0). CEQA: Resolution No. 72768 and Addenda hereto.**

GP06-T-01 - District 3

Action: Continued to June 5, 2007 per Administration.

10.5 Continuance of all General Plan amendment actions from May 15 and May 22, 2007 to June 5, 2007. (Planning, Building and Code Enforcement)

Action: Upon motion by Council Member Pyle, seconded by Council Member Campos and carried unanimously, all of the General Plan Amendment actions were continued to June 5, 2007. (9-0-1. Absent: Cortese.)

PUBLIC HEARINGS

11.2 Consideration of an ordinance rezoning the real property located on a portion of block bounded by The Alameda, Emory Street, Naglee Avenue, and Morse Street; east side of Morse Street, approximately 150 feet northerly of Naglee Avenue (744 Morse St) from R-1-8 Single Family Residence Zoning District and A(PD) Planned Development Zoning District to A(PD) Planned Development Zoning District to allow relocation and rehabilitation of one historic single-family residence (Structure of Merit), two new single-family detached residences, and parking lot reconfiguration for the Central YMCA on a 4.18 gross acre site (Metropolitan YMCA & LeBaron Family Trust, Owners; Mark DeMattei, Developer). CEQA: Mitigated Negative Declaration. Director of Planning, Building and Code Enforcement and Planning Commission recommend approval (5-0-2).

PDC06-100 - District 6

(Continued from 4/24/07 – Item 11.2, 5/1/07 – Item 11.3 and 5/15/07 – Item 11.3)

Documents Filed: (1) Memorandum from Council Member Oliverio, dated May 17, 2007, recommending approval of the Planning/Staff recommendation with additions as indicated in “Action. (2) Memorandum from Director of Planning, Building and Code Enforcement Joseph Horwedel, dated April 19, 2007, transmitting the Report of the Staff of the Department of Planning, Building and Code Enforcement on Project File No. PDC06-100, dated April 19, 2007, recommending approval with conditions on the subject rezoning. (3) Memorandum from Planning Commission Secretary Joseph Horwedel, dated April 26, 2007, transmitting the Planning Commission recommendation of approval. (4) Proof of Publication of Notice of Public Hearing, executed on April 13, 2007, submitted by the City Clerk.

Mayor Reed opened the public hearing. Dave LeBaron, Owner of the property, described the proposed project:

Public Comment: Speaking in favor to the proposed development project were Ray Hashimoto, HMM Engineers, Ken Hayes, Jeffrey Bedolla, Craig Paulsen, Rick Tawfik, Todd Tomlitz, Brian Gregory, Barbara Cardenas, Central YMCA, Rob Mezzetti, James Beard, Ed Ruder, Pierre Prodis, Terry Reilly, Jeannie Mirassou and Jean Dresden.

Speaking in opposition to the proposed development project were Travis Kimball, Chantale Hansen, Rosemarie Hansen, Warren Hansen, Judi Broughtin, Ruth Cavagnaro-Gilwee, Rawley Douglas, Gabriel Benedek, Heather Bilich Rust, Curt Hansen and Charles Bedolla.

11.2 (Cont'd.)

Mayor Reed closed the public hearing.

Motion: Council Member Oliverio moved approval of the Staff/Planning recommendations and his memorandum dated May 17, 2007. Vice Mayor Cortese seconded the motion.

Director of Planning, Building and Code Enforcement Joseph Horwedel responded to Council questions.

Council Member Oliverio requested that Staff conduct outreach to the community at the permit stage.

Action: On a call for the question, the motion carried unanimously, the recommendation of the Planning Commission and the Planning Director was approved, and [Ordinance No. 28054](#), entitled: "An Ordinance of the City of San José Rezoning Certain Real Property Situated on a Portion of a Block Bounded by The Alameda, Emory Street, Naglee Avenue and Morse Street; on the East Side was Morse Street, Approximately 150 Feet Northerly of Naglee Avenue (744 Morse Street) to A(PD) Planned Development Zoning District", was passed for publication, with the following conditions: (1) Applicant will begin work on the historic "Whitney Wright House" immediately and/or simultaneously with the construction of the other two homes. (2) Applicant will save and relocated two Oak trees (25 and 26), save the Monterey Pine (28) and will save trees 21, 22 and 23. (3) Allow for an R-1-8 zoning for the residential lots after development is completed in order to be consistent with the majority of other residential lots in the area. (4) Staff will conduct outreach to the community at the permit stage. (10-0.)

ADJOURNMENT

The Council of the City of San José was adjourned at 9:06 p.m. in memory of Yolanda King, the eldest child of the Rev. Martin Luther King, Jr., who spent her life pursuing her father's dream of racial harmony and peaceful practices through drama and motivational speaking.

Minutes Recorded, Prepared and Respectfully Submitted by,

Lee Price, MMC
City Clerk

smd/5-22-07MIN

Access the video, the agenda and related reports for this meeting by visiting the City's website at <http://www.sanjoseca.gov/clerk/agenda.asp> or <http://www.sanjoseca.gov/clerk/MeetingArchive.asp>